

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Thomas Charles Crangle,

Case No. 5:13 CV 842

Petitioner,

ORDER ADOPTING
REPORT AND RECOMMENDATION

-vs-

Warden LaShann Eppinger¹,

JUDGE JACK ZOUHARY

Respondent.

BACKGROUND

On remand from the Sixth Circuit, Charles Crangle, a state prisoner proceeding *pro se*, amended his Petition seeking a writ of habeas corpus under 28 U.S.C. § 2254 (Docs. 41–42). The Amended Petition raises a single ground for relief: Crangle contends the trial court erred when it failed to accurately describe the mandatory five-year period of post-release control associated with his life sentence. He therefore believes his guilty plea was not knowing and voluntary, in violation of his Fifth and Fourteenth Amendment rights. The Warden filed a Return of Writ (Doc. 43). Crangle filed a Traverse (Doc. 46), and the Warden filed a Sur-Reply (Doc. 47).

After the Amended Petition was fully briefed, Crangle filed a Motion to Stay requesting certification to the Ohio Supreme Court and appointment of counsel (Doc 49), which the Warden opposed (Doc. 50). He also filed a Motion to Stay seeking to amend the Petition a second time (Doc. 51). The Warden opposed (Doc. 52), and Crangle replied (Doc. 53).

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Crangle is currently incarcerated at Grafton Correctional Institution, where the Warden is LaShann Eppinger. Accordingly, the case caption is updated to read “*Thomas Charles Crangle v. Warden LaShann Eppinger*.”

This case was referred to Magistrate Judge James Knepp for preparation of a Report and Recommendation (R&R). The R&R (Doc. 54) recommends this Court deny the Amended Petition as procedurally defaulted, or in the alternative, without merit. The Magistrate Judge also issued an Order (Doc. 55) denying the Motions to Stay and to Amend. Crangle timely objected (Doc. 58). The Objection, however, is limited to the Magistrate Judge's Order denying the Motion to Stay the case and for Leave to Amend.

STANDARD OF REVIEW

The standard of review in referred cases depends on whether the matter considered by the Magistrate Judge is dispositive or non-dispositive. Objections related to dispositive motions are reviewed *de novo*, while non-dispositive motions are reviewed for clear error. *See Baker v. Peterson*, 67 F. App'x 308, 310 (6th Cir. 2003) (citing 28 U.S.C. § 636(b)(1) and Federal Civil Rule 72). The Sixth Circuit has not addressed whether a motion to amend is dispositive or non-dispositive. Most district courts in this Circuit treat an order on a motion to amend as non-dispositive. *See F.H. v. Shelby Cty. Schs.*, 2016 WL 10637101, at *1 (W.D. Tenn. 2016) (citing cases). Under either standard, the Objection is overruled.

DISCUSSION

Crangle raises two Objections to the Order denying his request to stay the case and for leave to amend. First, he contends the proposed amendment is not time-barred and properly relates back to the single claim raised in the Amended Petition because the new claims share the “same core of facts” (Doc. 58-1 at 2). Second, he argues the Magistrate Judge erred in denying his request for a stay because he “had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that [he] engaged in intentionally dilatory litigation tactics”

(*id.* at 4) (citing *Rhines v. Weber*, 544 U.S. 269, 278 (2005)). The Magistrate Judge directly addressed both of these arguments (Doc. 55 at 7–9), and the Order accurately states the facts and law.

This Court notes that the Objection does not challenge the R&R. Failure to object to the Magistrate Judge’s findings and recommendations constitutes a waiver of *de novo* review by the district court. *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). *See also Thomas v. Arn*, 474 U.S. 140 (1985). Upon review, this Court concludes that the R&R accurately states the facts and law, and this Court adopts it in its entirety.

CONCLUSION

The Objection (Doc. 58) is overruled. This Court adopts the R&R (Doc. 54) and the Order (Doc. 55) denying the Motions to Stay and to Amend, and denies the Amended Petition (Doc. 41). Further, this Court certifies an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c).

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE
April 4, 2018